

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CAROLYN SCHUBERT,)
)
Plaintiff,)
)
vs.) NO. CIV-12-639-D
)
AMERIPRIDE SERVICES, INC.,)
)
Defendant.)

ORDER

Before the Court is the Defendant's motion to dismiss [Doc. No. 1-3] for failure to perfect service within the requisite time period. Defendant's motion seeks dismissal pursuant to Oklahoma law, Okla. Stat. tit. 12 § § 2004(I) and 2012(B), because the motion was filed prior to the removal of this action from the District Court of Texas County, Oklahoma. Plaintiff filed her response to the motion after the action was removed.¹

Defendant argues that the Oklahoma statute requires service of summons and a copy of the Petition upon a defendant within 180 days of the filing of the action. In this case, Defendant notes the Petition was filed on October 28, 2011 in the District Court of Texas county, but the summons was not issued until January 25, 2012, and Defendant was not served until May 7, 2012. In her response, Plaintiff does not dispute these dates. However, she argues that the summons issued on January 25, 2012 was inadvertently mailed to Defendant's office in Kansas rather than to its Oklahoma service agent. According to Plaintiff, the certified mailing to the Kansas office was later returned to Plaintiff's counsel. Plaintiff then served the summons and Petition by certified mail to the service agent in Oklahoma.

¹Plaintiff's response reflects the case number assigned by the District Court of Texas County. Both parties are reminded that filings must now reflect the case number assigned by this Court.

Although it is apparent that Defendant was not timely served, the Court does not find that dismissal is warranted under these circumstances. When applying the requirements for service under Fed. R. Civ. P. 4, the Court does not dismiss an action for untimely service where the plaintiff shows good cause for the delay. *See* Fed. R. Civ. P. 4(m). Oklahoma's statute also provides that a plaintiff may avoid dismissal for untimely service upon a showing of good cause. Okla. Stat. tit. 12 § 2004(I).

Under the circumstances in this case, the Court finds that Plaintiff's explanation is sufficient to establish good cause. Plaintiff has now perfected service upon Defendant, and the case will proceed accordingly. The motion to dismiss [Doc. No. 1-3] is DENIED. Defendant shall file its Answer or other response to the Petition in accordance with the deadlines established by the Federal Rules of Civil Procedure and the Local Civil Rules of this Court.

IT IS SO ORDERED this 6th day of August, 2012.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE